In the Supreme Court of the United States

October Term, 1976

No. 76-1184

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION TO DISMISS OR AFFIRM

FRANK C. HEATH
1700 Union Commerce Building
Cleveland, Ohio 44115

CURTIS L. ROY
2300 First National Bank Building
Minneapolis, Minnesota 55402
Counsel for Appellees

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-0647

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Appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the United States Court of Appeals for the Eighth Circuit on the following grounds:

1. The decision of the Court of Appeals is clearly correct under the principles applied by this Court in *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), and reaffirmed in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976).

2. There is no conflict of decision.

3. The question on which the decision of the cause depends is so unsubstantial as not to need further argument.

QUESTION PRESENTED

Whether federal labor policy preempts the authority of the State of Minnesota to impose upon appellees, by legislation, pension obligations and pension funding obligations which differ materially from the pension and pension funding obligations contained in collective bargaining agreements between appellees and unions representing their employees.

STATUTE INVOLVED

Pertinent provisions of the Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) (hereinafter the Minnesota Pension Act) are set forth and described in the opinion of the Court of Appeals, 545 F.2d 599, at 601-2. The statute in its entirety is set forth in Appendix D to appellant's jurisdictional statement.

STATEMENT

White Motor is an Ohio corporation. In 1963, as a result of acquisition of the assets of Minneapolis-Moline, Inc., White Farm, a subsidiary of White Motor, began operating farm equipment manufacturing plants in Hopkins and Minneapolis, Minnesota. Both before and after this acquisition, the employees at these plants were represented by a labor union. Since 1955 that union has been the UAW.[1]

[1] International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions are collectively called the "UAW."

In 1950, a pension plan was established through collective bargaining for these employees. In subsequent collective bargaining agreements with White[2] and its predecessor the pension benefits negotiated for these employees were increased substantially. In 1968, collective bargaining negotiations resulted in the addition of a pension plan provision which required funding of unpaid past-service liability on a 30-year funding basis, and in 1971 this provision was amended to modify the amortization period to 35 years.[3]

In early 1972, White and the UAW entered into collective bargaining agreements covering employees at the Hopkins and Minneapolis plants for the period May 1, 1971 to May 1, 1974. Such collective agreements incorporated a "Pension Agreement and Plan" (hereinafter the "Plan"), as amended by the 1971-1972 collective bargaining negotiations. The Plan adopted in these 1971-1972 negotiations provided, in language unchanged since the first pension plan established in 1950 collective bargaining, as follows:

Section 6.09 - Source of Pensions.

Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.

* * * * *

Section 9.04 - Rights of Employees in the Fund.

* * * All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member there-

[2] White Motor and White Farm, its subsidiary, are collectively referred to herein as "White."

[3] Unpaid past-service liability is, at any given time, the excess of accrued liability of a pension fund over the present value of the assets of that fund. Deferred funding of past-service liability is a common feature of pension plans.

of shall be liable therefor in any manner or to any extent. (Court of Appeals Opinion, 545 F.2d at 602, App. A-6-A-7.)[4]

Contrary to the inference of defendant (D.Br. 12, 14),[5] these contractual limitations upon the pension liability of White and its predecessor were negotiated before the retirement of any employees under the pension plan. Therefore, this case raises no question concerning collective bargaining about benefits for retirees.[6]

During the 1968 and 1971 collective bargaining negotiations White, as a result of UAW bargaining insistence which stemmed from the union's recognition of the funding limits of the Plan and the possibility of plant closings and termination of the Plan, gave certain Pension Guarantees applicable to the Hopkins plant and the Minneapolis plant in the event of plant closing and termination of the Plan. By these guarantees, White assumed, in addition to its funding obligations under the Plan, liability for pension payments in the amount of approximately $7,000,000 (545 F.2d, at 603, App. A-7). Defendant's suggestion (D.Br. 4) that the pension "Guarantee Letters" operated to reduce White's pension funding obligations under the collectively bargained Plan is simply untrue.

Defendant has also mischaracterized the Plan by references (D.Br. 3-6) to "promised" pension benefits. The implication, of course, is that the Minnesota Pension Act is simply designed to force White to honor its contracts. The limitations on employer liability described above were

[4] References to pages of Appendix A to the jurisdictional statement are noted as "App. A- ."

[5] References to pages of appellant's jurisdictional statement are noted as "D.Br. ".

[6] *Allied Chem. & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). Of course, contracts made by an employer with the union representing its employees and for the benefit of retirees of that employer are valid and enforceable, as recognized in *Pittsburgh Plate Glass*, 404 U.S. at 181, n.20.

part of the negotiated pension plan entered into between the employer and a knowledgeable and experienced union representing its employees. White has met all of its pension obligations under its Minnesota agreements with the UAW. The only issue in this case relates to the effort of the State to impose additional pension obligations on White, which are not required by the White-UAW Plan.

After suffering substantial losses from 1969 to 1971 at the White Farm division, White in January, 1972 informed the UAW of its intention to close the Minneapolis and Hopkins plants. As a result of subsequent negotiations, the Hopkins plant has continued to operate, but operations at the Minneapolis plant were terminated in June of 1972. Relying upon Section 10.02 of the Plan, which expressly provided that the employer had the right to terminate the Plan at any time, White on June 30, 1972 acted to terminate the Plan. Arbitration and litigation ensued, and an arbitration award was entered, and subsequently confirmed in court proceedings, ruling that the Plan could not be effectively terminated prior to May 1, 1974, the expiration date of the collective bargaining agreement then in effect. By reason of this arbitration award, White took action again to terminate the Plan on May 1, 1974, and the Plan terminated on that date.

After the initial attempt by White to terminate the Plan and just twenty days before the Plan's eventual termination on May 1, 1974, the Minnesota Legislature on April 10, 1974 enacted the Minnesota Pension Act. Sections 181B.03-.06 of that Act purport to impose a "pension funding charge" directly on employers. Irrespective of contrary terms in any collective bargaining agreement, those sections provide that upon termination of a pension plan, any employee with ten years of credited service shall have a vested right to specified pension benefits computed

in accordance with the statute. That right is enforceable directly against the employer and not against the pension fund to which the employer has contributed. Sections 181B.09-.12 of the Minnesota Pension Act provide that the Commissioner of Labor and Industry, the defendant herein, shall certify amounts owing by an employer under that Act, which amounts are declared to "be a lien upon the employer's assets." Payment is to be made through the employer's purchase of prepaid deferred annuities for each employee to whom there is found to be liability.

The Minnesota Pension Act conflicts with the White-UAW Plan in a number of material respects, accurately described by the Court of Appeals as follows:

> The Minnesota Pension Act obligations conflict with White Motor's pension plan provisions in the following respects: (1) the Act grants employees vested rights to pension benefits which are not available under the pension plan; (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general assets of the employer, while the pension plan provides that benefits shall be paid only out of the pension fund; and (3) the Act does not permit employers to escape liability for funding of pension rights, but the pension plan permits White Motor to terminate the plan at any time, and in so doing end any liability for future payments to the pension fund, save those specifically guaranteed. Thus, essential features of the pension plan, deferred funding of past service liability coupled with limited employer liability and the power to terminate, were negated by the Pension Act. 545 F.2d at 603, App. A-8.

PROCEEDINGS BELOW

After the Commissioner of Labor and Industry had asserted his intention to enforce the Minnesota Pension Act against White, and had taken steps to do so, this action was filed on May 15, 1975. In an amended complaint for a declaratory judgment filed on July 24, 1975, plaintiffs challenged the constitutionality of the Minnesota Pension Act on a number of grounds and also contended that enforcement of the Act against them was preempted by federal labor law and policy.

When, on August 18, 1975, defendant notified plaintiffs that he was assessing against them a pension funding charge of $19,150,053 under the Minnesota Pension Act, plaintiffs filed motions for summary judgment or for a preliminary injunction on the sole ground that, by reason of conflict with federal labor law and policy, the Minnesota Pension Act, as applied to plaintiffs, was preempted. The District Court overruled plaintiffs' motions solely because of its determination that the Minnesota Pension Act was not preempted.

Plaintiffs appealed from the order of the District Court denying their motion for a preliminary injunction. The Court of Appeals reversed on the ground that the Minnesota Pension Act was preempted by federal labor policy and remanded the case for entry of judgment in conformity with the finding of preemption.

ARGUMENT

1. States May Not Interfere With the Substantive Terms of Collective Bargaining Agreements Negotiated Under the Mandate of the National Labor Relations Act.

The Minnesota Pension Act is in conflict with the White pension agreement and plan (the Plan) in the

respects outlined by the Court of Appeals. Defendant does not discuss the Court of Appeals' careful analysis of the conflicts between the Minnesota Pension Act and the Plan here involved, quoted *supra*, p. 6. Rather, defendant argues that the Minnesota Pension Act is simply directed at the termination of pension plans and the forfeiture of pension benefits and therefore does not interfere with the substantive terms of a collective bargaining agreement or prevent the parties from carrying out their agreement (D.Br. 10-12). This semantic gambit cannot obscure the fact that the Minnesota Pension Act is designed to and does nullify provisions of the collectively bargained pension plan controlling such critical facets of the pension benefits scheme as eligibility, vesting and the extent of the employer's liability for payment of pensions. Thus, from the time a collectively bargained pension plan was established in 1950 at the Minnesota plants, the plan provided that White (or its predecessor) would not be liable for payment of pension benefits beyond the funding obligations set forth in the plan. What could better illustrate a direct conflict between the Minnesota Pension Act and the White-UAW Plan than defendant's assessment against White of a pension funding charge of $19,150,053 more than White's contractural funding obligation? Defendant's suggestion (D.Br. 8, 15), that the Minnesota Pension Act relates only "tangentially" to the collectively bargained Plan and is only "peripheral to the bargaining process" is clearly contrary to the facts.

Federal labor law and policy protect not only the process of collective bargaining on pensions and other mandatory bargaining subjects[7] but also the substantive terms of the agreement which is the product of that bargaining.

[7] Pensions are a mandatory subject of bargaining under federal labor law. *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*. 336 U.S. 960 (1949).

The Court of Appeals in its decision below so held and said:

> If states cannot control the economic weapons of the parties at the bargaining table, *a fortiori*, they may not directly control the substantive terms of the contract which results from that bargaining. 545 F.2d at 606, App. A-15.

This Court has long recognized this principle. In *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), this Court said:

> A Union agreement made pursuant to the Railway Labor Act has, therefore, the imprimatur of the federal law upon it and, by force of the Supremacy Clause of Article VI of the Constitution, could not be made illegal nor vitiated by any provision of the laws of a State. 351 U.S. at 232.

The following year, in *California v. Taylor*, 353 U.S. 553 (1957), the Court held that the State of California could not invalidate a collective bargaining agreement covering employees of a railroad owned by the state.

The principles applied in *Hanson* and *Taylor* obviously apply with equal force to agreements negotiated under the mandate of the National Labor Relations Act. *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959). *Oliver* holds that a state antitrust statute cannot be applied to prevent an employer and a union "from carrying out their agreement upon a subject matter as to which federal law directs them to bargain." 358 U.S. at 295.[8] *Oliver*, citing *Hanson*, expressly recognized that "the paramount force of the federal law remains even though it is expressed in the details of a contract federal law empowers the parties to make. . . ." 358 U.S. at 296-297.

[8] The Court of Appeals in its opinion below quotes extensively from the careful discussion in *Oliver* of the nature and extent of federal labor law preemption. See 545 F.2d at 606-7, App. A-16-A-18.

Despite the clear holding of *Oliver*, defendant urges (D.Br. 13) and the District Court adopted the view that *Oliver* was limited to conflicts between federal labor law and state antitrust laws. *Oliver* provided no support for such a position. In any event, subsequent decisions of this Court make it clear that *Oliver* stands for the general proposition that a state cannot modify or invalidate an otherwise valid collective bargaining agreement. In *NLRB v. Insurance Agents*, 361 U.S. 477 (1960), the Court, citing *Oliver*, recognized that "Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences." 361 U.S. at 488.

The vitality and breadth of *Oliver* were again expressly recognized by the Court last term in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), by the following statement:

> Our decisions since *Briggs-Stratton* have made it abundantly clear that state attempts to influence the substantive terms of collective-bargaining agreements are as inconsistent with the federal regulatory scheme as are such attempts by the NLRB: "Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State." *Teamsters Union v. Oliver*, 358 U.S. 283, 296 (1959). 427 U.S. at 153.

These decisions of this Court also dispose of defendant's argument that federal labor law and policy protect only the bargaining process and not the bargain resulting therefrom. The agreements between White (and its predecessor) and the union expressly limiting the employer's liability upon termination of the pension plan are part of the bargain on a mandatory bargaining subject and protected from change by application of the Minnesota Pension Act. Defendant's contention that there is no obligation to bargain on termination of a pension plan or other aspects of a plant closing is contrary to the well established rule that employers must bargain on the impact of plant closings. *Royal Typewriter Co. v. NLRB*, 533 F.2d 1030, at 1039 (8th Cir. 1976).

There are no decisions of this Court in conflict with the decisions cited above. In fact, except for the decision of the District Court in this case, we believe there is no support for the proposition that federal labor law preemption does not protect agreements which are the products of collective bargaining.

2. Congress Did Not by the Welfare and Pension Plans Disclosure Act or by ERISA Cede to the States Authority to Control the Substantive Terms of Collectively Bargained Pension Plans.

There remains for consideration the claim of defendant that Congress, in enacting the Welfare and Pension Plans Disclosure Act, 29 U.S.C. §301 *et seq.* (hereinafter Pension Disclosure Act), ceded to the states the power to control substantive provisions of negotiated pension plans. The District Court so held. The Court of Appeals reversed and expressly held that Congress in passing the Pension Disclosure Act did not intend to regulate substantive provisions of employee benefit plans or to authorize such regulation by the states. 545 F.2d at 608-9, App. A-21-A-24. The Court of Appeals' decision is clearly correct in that neither the language of the Pension Disclosure Act, nor the legislative history of that Act, nor any authority discussing that Act supports the claimed power of a state to modify or invalidate pension provisions of collective bargaining agreements.

When the Pension Disclosure Act was enacted in 1958, Congress, by earlier passage of the Railway Labor Act and the National Labor Relations Act, had preempted state legislation which sought to modify or nullify a collective bargaining agreement negotiated under the umbrella of federal labor laws. The Supreme Court in *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), made that clear when it expressly held that "a union agreement made pursuant to the Railway Labor Act * * * could not be made illegal or vitiated by any provision of the law of a State" (351 U.S. at 232), and reaffirmed that holding in 1957 in *California v. Taylor*, 353 U.S. 553. The same principle applied to the National Labor Relations Act, as recognized in *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), at 296-97.

In that situation, defendant's claim of freedom from federal labor law preemption can be accepted only if Congress, in enacting the Pension Disclosure Act, can be said to have ceded affirmatively to the states the right to modify or invalidate the pension provisions of a collective bargaining agreement negotiated under the authority of the National Labor Relations Act. There is no support for such a position.

After the Pension Disclosure Act was passed, states of course retained their *pre-existing* right to supervise the operation and administration of pension plans but that right did not include the right to modify or destroy the pension grants and pension obligations set forth in collective bargaining agreements. The plain language of the Pension Disclosure Act clearly demonstrates the limited nature of the power which Congress intended to leave to the states. The very section relied upon by the defendant, Section 309(b), provides as follows:

> The provisions of this chapter . . . shall not be held to exempt or relieve *any person from liability, duty, penalty, or punishment* provided by any present or future law . . . of any State affecting the *operation or administration* of employee . . . pension benefit plans. . . . 29 U.S.C. §309(b). (Emphasis added).

The Court of Appeals correctly held that such language, which permits state laws affecting "the operation or administration" of pension plans, cannot be deemed to authorize modification of the substantive terms of collectively bargained plans.

While the statutory language is clear on its face, the legislative history of the Pension Disclosure Act, as recognized by the Court of Appeals, "emphasizes the limited purpose of this legislation and that the Act's provisions do not affect substantive terms of employee benefit plans." 545 F.2d at 608, App. A-21. The pertinent Senate Report makes it clear that the Pension Disclosure Act is "a disclosure statute" designed "to leave to the States [not cede to the states] the detailed regulations relating to insurance, trusts, and other phases of their [the plans'] operations * * *." S. Rep. No. 1440, 85th Cong. 2d Sess. (1958), 1958 *U.S. Code Cong. and Admin. News* 4137, 4153-54. The relevant House Report said that "the scope of the bill [the Pension Disclosure Act] is limited to disclosure and reporting and does not go into the field of regulation." H. R. Rep. No. 2283, 85th Cong. 2d Sess. (1958), 1958 *U.S. Code Cong. and Admin. News* 4181, 4189.

Congress has demonstrated its capacity to make a clear and explicit grant of regulatory power to the states when it intends to do so. Indeed, the National Labor Relations Act contains many provisions which explicitly sanction state regulation in specific areas. See, for example, sections 10(a), 29 U.S.C. §160(a) (authorizing the National Labor Relations Board to cede jurisdiction to state labor relations agencies), 14(b), 29 U.S.C. §164(b) (authorizing state right-to-work laws), and 14(c)(2), 29

U.S.C. §164(c)(2) (authorizing the National Labor Relations Board to cede certain jurisdiction to states). Pointing to such specific grants of authority, this Court has made it clear that Congressional exceptions to preemption in the areas of labor law must be specific to be effective:

> * * * Congress [has] demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation 'preempts the field that the act covers insofar as commerce within the meaning of the act is concerned' and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative. *Amalgamated Assoc. v. Wisconsin Employment Relations Bd.*, 340 U.S. 383, 397-98 (1951). (Footnotes omitted).

The Pension Disclosure Act contains no such specific grant of authority to the states. In fact, the Pension Disclosure Act was not designed "to affect the course of collective bargaining relations at all." *Sylvania Electric Products, Inc. v. NLRB*, 358 F.2d 591, 592 (1st Cir., 1966), *cert. denied*, 385 U.S. 852 (1966).

Thacher v. United Construction Workers, 10 N.Y.2d 439, 180 N.E.2d 245 (N.Y., 1962), on which defendant relies (D.Br. 20), does not require a contrary conclusion, for the court there expressly recognized, contrary to defendant's contention, that under *Oliver* "no State statute could be applied to prevent the carrying out of the collective bargaining agreement." 180 N.E.2d, at 247.

Defendant suggests that the enactment by Congress, on September 2, 1974, of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1,001, et seq., somehow proves that Congress had earlier ceded to the states authority to control substantive terms of collectively bargained pension plans. Defendant pressed the same argument before the District Court and the Court of Appeals

without success. ERISA was passed and became effective *after* the Minnesota Pension Act and *after* the termination of the Plan. It is impossible to see how a decision by Congress to enact pension legislation can, in itself, be said to sanction similar state legislation in an area which Congress has otherwise preempted. State legislation is preempted even where it covers the same subject as a federal statute. Thus, in *Connell Construction Co. v. Plumbers & Steamfitters*, 421 U.S. 616 (1975), *rehearing denied*, 423 U.S. 884, this Court held that a state antitrust law was preempted by federal labor law even though the state law prohibited conduct which was also illegal under federal antitrust law. 421 U.S. at 635-36.

Nor can Congress' deferral of the date when ERISA preempted state legislation be considered as recognizing the right of states to enact pension legislation which otherwise conflicts with federal labor law and policy. The ERISA provision in question merely postpones the preemptive effect of ERISA itself until January 1, 1975, thereby preserving valid pre-1975 state-created claims. It does not, and cannot, in bootstrap fashion, validate statutes whose application is barred for reasons independent of ERISA, in this case the preemptive effect of federal labor law.

As previously noted, *supra*, p. 14, federal labor law preemption requires a very specific expression of Congressional intent to permit state regulation in this area.

If a state could enforce statutes modifying or abrogating negotiated pension plans, the balance established by Congress in respect of labor matters would be upset.[9] If that were to happen, then, as noted by the Court of Appeals, a different state legislature in another day could take away employee benefits obtained through good faith collective bargaining. 545 F.2d at 610, App. A-24.

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[9] See Cox, *Labor Law Preemption Revisited*, 85 HARV. L. REV. 1337, 1352 (1972).

CONCLUSION

The decision below is obviously correct under principles repeatedly announced and applied by this Court. There is no conflict of decision. It is thus clear that there is involved in this cause no substantial question not previously decided by this Court.

We respectfully submit that the Court should dismiss this appeal or, in the alternative, affirm the judgment entered in the cause by the United States Court of Appeals for the Eighth Circuit.

FRANK C. HEATH
1700 Union Commerce Building
Cleveland, Ohio 44115

CURTIS L. ROY
2300 First National Bank Building
Minneapolis, Minnesota 55402
Counsel for Appellees

Of Counsel:
JONES, DAY, REAVIS & POGUE
JOHN L. STRAUCH
JAMES A. RYDZEL
1700 Union Commerce Building
Cleveland, Ohio 44115

DORSEY, WINDHORST, HANNAFORD,
WHITNEY & HALLADAY
PETER S. HENDRIXSON
2300 First National Bank Building
Minneapolis, Minnesota 55402